

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 19 1993

LAW OFFICES
HALEY, BADER & POTTS

4350 NORTH FAIRFAX DR., SUITE 900

ARLINGTON, VIRGINIA 22203-1633

TELEPHONE (703) 841-0606

FAX (703) 841-2345

POST OFFICE BOX 19006

WASHINGTON, D.C. 20036-9006

TELEPHONE

(202) 331-0606

January 19, 1993

MICHAEL H. BADER
ADMITTED IN D.C. ONLY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OUR FILE NO.
0200-130-63

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

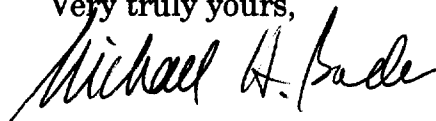
Re: MM Docket No. 92-295
RM-8016

Dear Ms. Searcy:

On behalf of TV 14, Inc., licensee of WTLK-TV, Rome-Atlanta, Georgia, I transmit herewith, for filing and distribution to the Commissioners, an original and nine copies of its reply to comments filed January 6, 1993, by Georgia Television Company, WGNX, Inc., Georgia Public Telecommunications Commission and Scripps Howard Cable of Northwest Georgia, in the above-referenced proceeding.

Kindly communicate any questions concerning this matter directly to this office.

Very truly yours,



Michael H. Bader

MHB/app

Enclosures

No. of Copies rec'd
List A B C D E

249

ORIGINAL
RECEIVED

Before The
Federal Communications Commission

Washington, D.C. 20554

JAN 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of

Request by TV 14, Inc.,
to Amend Section 76.51 of the
Commission's Rules to Include
Rome, Georgia, in the Atlanta,
Georgia, Television Market

MM Docket No. 92-295
RM-8016

TO: The Commission, *en banc*

REPLY COMMENTS
OF
TV 14, INC. (WTLK-TV)

TV 14, Inc., ("WTLK-TV"), by its attorneys, replies to the comments of Georgia Television Company ("WSB-TV"), WGNX, Inc. ("WGNX"), Georgia Public Telecommunications Commission ("GPTC") (including its counterproposal), and Scripps Howard Cable of Northwest Georgia ("Scripps Howard").

SUMMARY

While GPTC and Scripps Howard support the Commission's proposal (as does WTLK-TV), two existing stations in Atlanta oppose it. WSB-TV, Atlanta's ABC TV affiliate, owned by Cox, one of the world's largest media aggregations, opposes the redesignation of the Atlanta TV market as Atlanta-Rome. WGNX, another Atlanta TV station, owned by *The Chicago Tribune* media conglomerate, opposes such redesignation.

Each of the opponents strains to find some basis for opposing the FCC's proposal. When the agency reaches these two papers for review, it will find self-serving, anticompetitive utterances, which fly in

the face of the primary objective of the Commission in this type of case. That objective is clearly stated in the Notice (par. 6) and in a series of FCC decisions, in this way:

"Market hyphenation helps equalize competition"¹

These competitors urge the Commission to help them stifle competition by constructively denying WTLK-TV cable carriage. They do not even try to express a public interest in their pleadings. Instead, they seek to use regulatory roadblocks to the enhancements of competition. Thus, WGNX urges the Commission to wait (WGNX, p.4). It asks that the agency seek a "global analysis" (WGNX, p.5) and to avoid a "hurried decision" (WGNX, p.9).

This type of cynical stonewalling betrays WGNX's clear motive-delay.²

WSB's motive is also suspect. It is the Atlanta media monopolist. It has an unparalleled stranglehold on radio, television and newspapers in Atlanta. In recent months has been able to eliminate its only daily newspaper competition, the *Gwinett Daily News*, a former *New York Times* outlet. WSB, with all of its billions,³ repeats the same refrain as WGNX delay, delay, delay. To this it adds the astounding argument

¹ *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

² The WGNX parent (*Chicago Tribune*) owns six TV stations, four or more radio stations, six daily newspapers, and the WGN Superstation on cable in 34,400,000 homes; its sister Superstation, WPIX, is on cable in 9,200,000 homes.

³ Cox Enterprises owns WSB AM, FM and TV in Atlanta, as well as Atlanta's daily newspapers, plus six other TV stations, thirteen other radio stations, 15 other dailies, ten weeklies, and 1,677,769 cable connections in 17 states.

that WTLK-TV has not proved its dire financial condition, that is, it “. . . has never provided any factual support for these claims” (WSB-TV, pp. 3-4). Clearly, Cox has not taken the time to read the record in this case. WTLK-TV is in a serious financial situation. It has been forced to cut its staff from more than 60 to fewer than 10. Programs have been curtailed until cable carriage is secured. The station does not have the billions of dollars of resources of the two opposing parties (Cox and Tribune).

That the only opposition to the FCC proposal has come from two of the world's largest media companies, which combined, exercise vast television dominance and cable dominance in Atlanta, (as well as all over the nation⁴) ought to state the opposition quite adequately, and ought to end their debate.

Fortunately, two parties in addition to WTLK-TV support the Commission: GPTC and Scripps Howard. Their positions should reinforce the Commission's determination to redesignate the Atlanta market.

GPTC is a public agency, an agency of the State of Georgia. It urges the Commission to finalize the proposed redesignation, and to go one step farther--include Athens, Georgia in an “Atlanta-Rome-Athens” market. Such a counterproposal is both in the public interest and in the interest of WTLK-TV. WTLK-TV endorses it.

Scripps Howard favors the redesignation. It operates Rome's CATV system. It specifies why the current designation deprives the

⁴ Statistics as to the WSB (or Cox) and WGNX (or Tribune) are secured from 1992 *Television and Cable Factbook*.

public in Rome of needed programs, e.g., all of Channel 69 Atlanta, ACC basketball, etc. (Scripps Howard, par. 3).

In short, the FCC must decide whether to protect and shelter two media Goliaths from competition or enhance the public's ability to receive television.

Since the rule of law is to "equalize competition," there is no basis for acceding to the WSB and WGNX pleas for delay.

DISCUSSION

WTLK-TV believes that the Commission may and should summarily dismiss the anticompetitive positions taken by WSB and WGNX-TV and finalize the rulemaking. Neither has provided any information or argument dealing with the public interest in this matter. The two oppositions are blatantly anticompetitive and self-serving.

In an effort to give some public character to their self-serving and anticompetitive oppositions, WSB-TV and WGNX argue that this proceeding should be delayed until the Commission completes its overall study of the matter of expanding its description of markets on a nationwide basis. That study is mandated by the 1992 Cable Act. For WSB-TV and WGNX to cite the Cable Act and the proceeding initiated in response to it, however, would be in direct contradiction of the mandate of congress that the Commission do something about updating its rules. Nowhere in the history of the Cable Act of 1992⁵ is there a mandate that the Commission arrest its procedures to review individual market situations. In fact, the whole purpose of the Cable Act, and the

⁵ Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385, 102 Stat. ---(1992).

Commission's implementing Docket No. 92-195, is to improve the opportunity for competition. The Commission stated this in its *Notice of Proposed Rule Making* in MM Docket 92-259 where we find in paragraph 4 the following:

"...we note that the 1992 Act and its legislative history evidence Congress' conclusion that there is a substantial governmental interest in ensuring that cable subscribers have access to local commercial and noncommercial broadcast stations."

How this congressional direction and the Commission's clear recognition of it would be served by delaying or seeking a "global solution" or some other tactical impediment is beyond us. But that is exactly what WSB-TV and WGNX ask the Commission to do.⁶

The Commission was fully aware of the existence of the Cable Act when it issued the *Notice of Proposed Rule Making* in this proceeding on December 8, 1992. For it to vacate that very important notice, for it to thumb its nose at the 1992 Cable Act mandate, and for it to accede to the anticompetitive delaying tactics of WSB-TV and WGNX would be unthinkable.

The two opponents also urge that the test of prior proceedings such as Fresno-Visalia would not be met if this proceeding resulted in a finalization of the designation of the market as Atlanta-Rome or as we think it ought to be, Atlanta-Rome-Athens. Our basic comments demonstrated why the test in Fresno-Visalia, or in any of the other

⁶ WGNX apparently randomly tossed in the idea of a "global solution." In its comments in the FCC's rulemaking proceeding to implement the Cable Act the idea is not mentioned. In fact, WGNX does not offer any help in that proceeding on how the Commission should structure the carriage rules. It is interested only in retransmission consent. FCC MM Docket 92-259.

proceedings of similar nature would be met. Of prime importance, the fact is that the market is now Atlanta-Rome both in practice and in designation by Arbitron. The two Atlanta stations which seek to erect roadblocks in this proceeding are carried on the Rome system. Thus, if these two particular stations were to approach the matter in a candid way, they would seek to remove themselves from the Rome system since apparently they believe that Rome has nothing to do with Atlanta, and therefore, Rome cable has no need for Atlanta coverage. It will be interesting to observe whether either of the two opponents initiate steps to cause the Rome cable system to remove their signals. The two Atlanta stations are going to have full opportunity to do that, once the Cable Act of 1992 is implemented, and it would seem that when these two opponents finally address the realities and the public's need, they will conclude that indeed there is a single television market which should be known as Atlanta-Rome-Athens.

Under all the circumstances, we respectfully urge the Commission to finalize the rulemaking in this proceeding at the earliest possible time.

Respectfully submitted,
TV 14, INC.

By Michael H. Bader
Michael H. Bader

Its Attorneys

HALEY, BADER & POTTS
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633
703/841-0606
January 19, 1993

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

Kenneth C. Howard, Jr., Esquire
Baker & Hostetler
1050 Connecticut Avenue, N.W., Suite 1100
Washington, D.C. 20036-5304
Counsel to Scripps Howard Cable
of Northwest Georgia

Mr. Neal F. Fondren, General Manager
Scripps Howard Cable of Northwest Georgia
707 East First Street
Rome, GA 30181

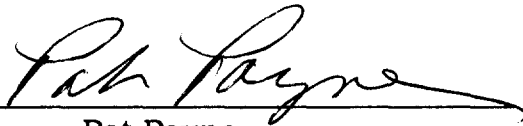
Theodore D. Frank, Esquire
Robert D. Primosch, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
Counsel to Georgia Public
Telecommunications Commission

Werner K. Hartenberger, Esquire
Kevin F. Reed, Esquire
Suzanne M. Perry, Esquire
Dow, Lohnes & Albertson
1255 - 23rd Street, N.W., Suite 500
Washington, D.C. 20037
Counsel to Georgia Television Company

Charles J. Sennet, Esquire
Tribune Company
435 North Michigan Avenue
Chicago, IL 60611
Counsel to WGNX Inc.

Alan E. Aronowitz, Esquire *
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8002
Washington, D.C. 20554

Leslie Forrest, Esquire
General Counsel
Small Business Administration
1111 - 18th Street, N.W.
Washington, D.C. 20036


Pat Payne

January 19, 1993
*Hand-delivered